

### **REMARKS**

The Examiner has required restriction between ten inventions: (I) **claims 1-2, 10-29, 35, 46-49, and 57-58**, drawn to a nucleic acid of SEQ ID NO:1, a method of expressing a protein by using the nucleic acid, an expression cassette comprising the nucleic acid, a host cell comprising the cassette, classified in class 435, subclass 189, 320.1, 252.3, class 536, subclass 23.2, (II) **claims 3-5, 30-34, 71-73**, drawn to a hydroxylase of SEQ ID NO:2, a fusion protein comprising the enzyme, classified in class 435, subclass 320.1, class 536, subclass 23.2, (III) **claims 6-7, 36-37, 59-60** drawn to a nucleic acid of SEQ ID NO:5, an expression cassette comprising the nucleic acid, classified in class 435, subclass 320.1, class 536, subclass 23.2, (IV) **claims 8-9, 71, 74-75**, drawn to an oxidoreductase of SEQ ID NO:6, a fusion protein comprising the enzyme, classified in class 435, subclass 189, (V) **claims 38-45**, drawn to an expression cassette comprising DNA encoding an enzyme from the metabolic pathway for sitosterol synthesis, a host cell comprising the cassette, a method of making one or more enzymes by using the host cell, a method of oxidizing a compound by using he host cells, classified in class 435, subclass 320.1, 252.3, (VI) **claims 50-52, 56**, drawn to an antibody to a portion of SEQ ID NO:2 and a composition comprising the antibody and a carrier, classified in class 530, subclass 287.9, (VII) **claims 53-56**, drawn to an antibody to a portion of SEQ ID NO:6 and a composition comprising the antibody and a carrier, classified in class 530, subclass 287.9, (VIII) **claim 61**, drawn to the use of a host cell with the gene of claim 1 for the manufacture of a medicament for specific purposes, classified in class 435, subclass 252.3, **claims 62-70**, drawn to a composition and its use to product spores, classified

in class 536, subclass 1.11, and (X) **claims 76-77**, drawn to an 11 alpha hydroxylated steroid and a method of making it, classified in class 435, subclass 68.1 and class 540, subclass 2.

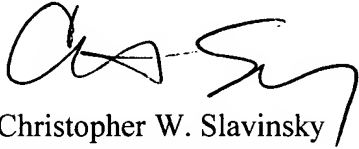
Restriction was required because the Examiner believed that the inventions are distinct, based on the following reasons: Groups I-VII and IX-X are drawn to different chemical compounds that are patentably distinct. Inventions I and VIII are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown:: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In the instant case, the examiner indicated the product as claimed can be used in a materially different process such as making an enzyme that is not involved with a treatment process.

Applicant respectfully requests reconsideration of this restriction under 35 U.S.C. § 121. The example presented by the Examiner relating Inventions I and VIII as product and process of use does not sufficiently demonstrate a distinct invention. The enzyme of claim 1 catalyzes a specific reaction. Dependent claim 61 uses that enzyme to catalyze the same specific reaction, which is not involved with a treatment process. Instead, it is the product of that reaction in claim 61 which is involved with the treatment process. Therefore, the method of claim 61 is not patentably distinct from the enzyme of claim 1, because the manufacture of the medicament occurs through the same mechanistic pathway and said mechanistic pathway is not part of the treatment process, but rather a means of creating a treatment. Applicant respectfully requests reconsideration of Invention VIII as part of Invention I.

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Amendment Dated 11 March 2004  
Reply to Restriction Requirement of February 10, 2004

As the Examiner has indicated on Pages 2-3 of his action, class 435, subclasses 189, 320.1, and 252.3 and class 536, subclass 23.2 are each present in Invention I as well as Inventions II, III, IV, V, and VIII. Following the election of Invention I herein, Examiner will search each of these class/subclass combinations, covering multiple inventions. Applicant holds that searching the subject matter of these claims presents no undue burden to the Examiner. Therefore, Applicant requests Examiner reconsider the restriction requirement with respect to the ten inventions discussed in the action dated 10 Feb 2004.

Respectfully submitted:

A handwritten signature in black ink, appearing to read 'C. Slavinsky', with a stylized flourish at the end.

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